

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 06-49800

LENDELL DEAN SIMMONS, *pro se*,

Chapter 13

Debtor.

Judge Thomas J. Tucker

**ORDER DENYING DEBTOR'S MOTION FOR THE COURT TO ORDER THE
AUTOMATIC STAY TO TAKE EFFECT UNDER 11 USC § 362(c)(4)**

Debtor filed his voluntary petition for relief under Chapter 13 on July 26, 2006. On August 18, 2006, Debtor filed a motion entitled "Motion For the Court To Order The Automatic Stay To Take Effect Under 11 USC § 362(c)(4)" (Docket # 18). Although Debtor states that this is a motion for an order for the stay to take effect under § 362(c)(4), it is actually a motion to extend the stay governed by § 362(c)(3).¹

Under 11 U.S.C. § 362(c)(3)(B),² in order for the Court to extend the stay, a hearing on a motion to extend the automatic stay must be completed before the stay terminates under § 362(c)(3)(A), and, therefore, within 30 days of the filing of the case. Because of the statute's 30-day hearing deadline, L.B.R. 4001-6(a) (E.D.M.) requires that a motion to extend the stay be filed and served within 7 days after the bankruptcy petition is filed, and that:

Immediately after filing the motion [to extend the stay], the

¹ Section 362(c)(4) applies when "2 or more single or joint cases of the debtor were pending within the previous year but were dismissed." Debtor had only one case that was pending within the previous year (Case No. 05-72995). Prior to filing Case No. 05-72995, Debtor had filed a voluntary petition for relief under Chapter 13, initiating Case No. 03-50069. However, that case was dismissed on May, 19, 2004 and was closed on February 1, 2005. Therefore, it was not pending within the year preceding this case and does not count for purposes of § 362(c)(4). Section 363(c)(3) applies "if a single or joint case of the debtor was pending within the preceding 1-year period was dismissed[.]"

² Citations to the Bankruptcy Code in this Order are to the Code as amended by the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005."

movant shall obtain a hearing date from the judge's courtroom deputy clerk, who will cause notice of the hearing to be served on parties in interest.

In this case, Debtor violated this Local Rule, because he filed his motion 23 days after filing his bankruptcy petition, and did not contact the judge's courtroom deputy clerk immediately after filing the motion to obtain a hearing date. By the time this motion came to the Court's attention, it was impossible to schedule and complete a hearing on Debtor's motion to extend the stay within the required 30-day period, so the motion must be denied.

Accordingly,

IT IS ORDERED that Debtor's "Motion For the Court To Order The Automatic Stay To Take Effect Under 11 USC § 362(c)(4)" (Docket # 18), is DENIED.

Entered: August 29, 2006

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge